No. 78, Original

In the Supreme Court of the United States

OCTOBER TERM, 1977

STATE OF CALIFORNIA, PLAINTIFF

v.

STATE OF ARIZONA and the UNITED STATES OF AMERICA

RESPONSE OF THE UNITED STATES TO THE MOTION FOR LEAVE TO FILE COMPLAINT

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Pursuant to 28 U.S.C. 1251(a)(1) and (b)(2) California seeks leave to file a complaint to quiet title to certain lands on an 11.3 mile stretch of the former beds of the Colorado River. As Arizona emphasizes in its Brief in Opposition to the motion (Br. in Opp. 4), the question presented here is not that of the proper political boundary between the two States,[1] but, rather, the ownership of the various beds and channels that have been occupied by the river, and the precise location of these beds, their banks, and the mid point of each channel.

1. The United States agrees with Arizona's suggestion that the case poses complex factual issues which should, if possible, be resolved by a federal district court rather than

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[1]The Interstate Compact Defining the Boundary Between the States of Arizona and California, 80 Stat. 340, defined the political boundary between the two States by fixed stations of latitude and longitude to eliminate jurisdictional confusion.

by this Court. We are unable to agree, however, with Arizona's conclusion (Br. in Opp. 5) that an alternative forum is available in the district court. Although Arizona has advised the Court (*ibid.*) that it "would consent to such an action [brought in federal district court] and waive any immunity it may possess under Title 28, U.S.C.," the parties may not by consent confer jurisdiction on any court. 28 U.S.C. 1251(a)(1) provides that the Supreme Court "shall have original and exclusive jurisdiction" over "[a]ll controversies between two or more States," and this provision has been construed as applicable to suits involving conflicting claims by one State against another regardless of the presence of the United States as a party, or the alignment of the parties. See *United States* v. *Nevada*, 412 U.S. 534, 537; *State Water Control Board* v. *Washington Suburban Sanitary Commission*, 61 F.R.D. 588 (D. D.C.). Accordingly, there is no forum other than this Court in which the dispute between California and Arizona may be resolved. Compare *Illinois* v. *City of Milwaukee*, 406 U.S. 91.

2. California seeks to make the United States, as well as Arizona, a defendant. Recognizing that suits against the United States are barred by sovereign immunity absent a waiver by Congress, California invokes 28 U.S.C. (Supp. V) 2409a(a). In relevant part, that provision permits the United States to be named "as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest * * *." But this waiver extends only to suits brought in the district court; 28 U.S.C. (Supp. V) 1346(f) provides that "[t]he district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title * * *." It is of course settled that Congress may authorize suits against the United States to be brought only in designated courts. *United States* v. *Shaw*, 309 U.S. 495.

Accordingly, the question arises whether the suit could proceed as between California and Arizona, in the absence of the United States. We think not. Insofar as the two States disagree about the location and width of the former main channel of the Colorado River in the Davis Lake area, the resolution of that dispute will inevitably affect the interests of the United States as the principal riparian landowner. The United States, therefore, would seem to be an indispensable party.

3. We would normally be reluctant to assert the sovereign immunity of the United States and its status as an indispensable party to bar *bona fide* interstate litigation. But we note Arizona's representation (Br. in Opp. 6) that "[t]alks have already begun by both California and Arizona to solve these problems through possible legislation and exchange of property." We agree with Arizona that a negotiated settlement, if one can be reached, would be in the best interests of all parties. Accordingly, the Court may deem it appropriate to hold California's motion without action for a reasonable period of time to permit the parties to try to reach agreement, or at least narrow the areas of dispute. In the alternative, the Court might deny California's motion without prejudice to its renewal if no agreement can be reached.

In either event, if, after the lapse of a reasonable time, no agreement has been reached, we would urge the Court to grant California's motion as to Arizona, on the understanding that the United States would without delay seek permission to intervene. Such intervention would, however, be limited to the area south of the junction of the "Pilot Cut" with the 1947 bed of the river. We make this reservation in light of the statute of limitations that

Congress enacted in lifting sovereign immunity to permit quiet title actions to be brought in the district court (28 U.S.C. (Supp. V) 2409a(f)); in our view, this provision should foreclose any challenge to long published federal claims north of that point.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

APRIL 1978.

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